

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application )  
of )  
MOLOKAI PUBLIC UTILITIES, INC. )  
For review and approval of rate )  
increases; revised rate schedules; )  
and revised rules. )

DOCKET NO. 2009-0048

PUBLIC UTILITIES  
COMMISSION

2009 NOV -4 P 2:20

FILED

**COUNTY OF MAUI'S RESPONSE TO MOLOKAI LIMITED'S MOTION FOR  
RECONSIDERATION OF PORTIONS OF ORDER GRANTING INTERVENTION  
TO THE COUNTY OF MAUI, WEST MOLOKAI ASSOCIATION, AND STAND  
FOR WATER ENTERED OCTOBER 16, 2009**

**EXHIBIT A**

**and**

**CERTIFICATE OF SERVICE**

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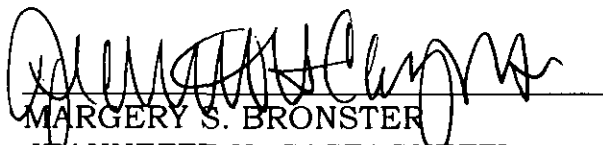
Attorneys for County of Maui

**COUNTY OF MAUI'S RESPONSE TO MOLOKAI LIMITED'S MOTION FOR  
RECONSIDERATION OF PORTIONS OF ORDER GRANTING INTERVENTION  
TO THE COUNTY OF MAUI, WEST MOLOKAI ASSOCIATION, AND STAND  
FOR WATER ENTERED OCTOBER 16, 2009**

COUNTY OF MAUI (the "County"), by and through its attorneys,  
BRIAN T. MOTO, Corporation Counsel, JANE E. LOVELL, Deputy Corporation  
Counsel, and BRONSTER HOSHIBATA, responds to Molokai Properties  
Limited's Motion for Reconsideration of Portions of Order Granting Intervention  
to the County of Maui, West Molokai Association, and Stand for Water Entered  
October 16, 2009 pursuant to HAR § 6-61-55 as follows:

Simultaneously with the filing of this Response, the County has  
filed a Response to Molokai Properties Limited's ("MPL") Motion for  
Reconsideration filed in a related rate application proceeding entitled In the  
Matter of the Application of Wai'ola O Moloka'i, Inc., Docket No. 2009-0049.  
The County's Response filed in the Wai'ola Application Proceeding is attached  
as Exhibit A and incorporated herein by reference. For the reasons stated in  
Exhibit A, MPL's Motion for Reconsideration in this proceeding should also be  
denied.

DATED: Honolulu, Hawaii, November 4, 2009.

  
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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application	)	
	)	DOCKET NO. 2009-0049
of	)	
	)	
WAI'OLA O MOLOKAI, INC.	)	
	)	
For review and approval of rate	)	
increases; revised rate schedules;	)	
and revised rules.	)	

**COUNTY OF MAUI'S RESPONSE TO MOLOKAI PROPERTIES LIMITED'S  
MOTION FOR RECONSIDERATION OF PORTIONS OF ORDER GRANTING  
THE MOTIONS TO INTERVENE FILED BY THE COUNTY OF MAUI AND  
STAND FOR WATER ENTERED OCTOBER 16, 2009**

**and**

**CERTIFICATE OF SERVICE**

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**EXHIBIT A**

**COUNTY OF MAUI'S RESPONSE TO MOLOKAI PROPERTIES LIMITED'S  
MOTION FOR RECONSIDERATION OF PORTIONS OF ORDER GRANTING  
THE MOTIONS TO INTERVENE FILED BY THE COUNTY OF MAUI AND  
STAND FOR WATER ENTERED OCTOBER 16, 2009**

Intervenor COUNTY OF MAUI (the "County"), by and through its attorneys, BRIAN T. MOTO, Corporation Counsel, JANE E. LOVELL, Deputy Corporation Counsel, and BRONSTER HOSHIBATA, responds to Molokai Properties Limited's Motion for Reconsideration of Portions of Order Granting the Motions to Intervene Filed by the County of Maui and Stand for Water Entered October 16, 2009 pursuant to HAR § 6-61-55 as follows:

Molokai Properties Limited ("MPL") argues that the Commission should not have designated MPL as a party to this proceeding<sup>1</sup> because MPL "has no role to play in this case." *Motion for Reconsideration at 2.* MPL's arguments are without merit. Therefore, the Commission should deny MPL's motion for reconsideration.

The Commission has the authority to designate MPL, Wai'ola O Moloka'i, Inc.'s parent company, as a party to this proceeding. As MPL readily admits, MPL provided assurances to the Commission that it would cover Wai'ola's debts when the Commission authorized Wai'ola to operate as a utility. The Commission, in issuing the Certificate of Public Convenience and Necessity to Wai'ola, relied on MPL's assurances that MPL would provide capital contributions to Wai'ola. Thus, by representing to the Commission that MPL

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<sup>1</sup> MPL also filed a similar motion for reconsideration in the Matter of the Application of Molokai Public Utilities, Inc., Docket No. 2009-0048. The County has also filed a response to MPL's motion in Docket No. 2009-0048.

would cover its subsidiary's debts, MPL has voluntarily subjected itself to the Commission's authority.

Further, in ratemaking proceedings, which this matter is, HRS § 269-16 authorizes the Commission to consider the financial status of MPL and make adjustments, if appropriate, in considering the financial status of Wai'ola. The statute provides:

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the State of Hawaii, and whether or not affiliated) *owned or controlled directly or indirectly by the same interests*, the commission may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among the organizations, trades, or businesses, if it determines that the distribution, apportionment, or allocation is *necessary to adequately reflect the income of any such organizations, trades, or businesses to carry out the regulatory duties imposed by this section.*

HRS § 269-16(e) (emphasis added). Given that MPL previously participated in proceedings before the Commission, made promises to capitalize and fund its subsidiary utility company, and that the Commission has the authority to consider MPL's financials in this ratemaking proceeding, the Commission has the authority to designate MPL as a party.

Further, MPL meets the definition of an "affiliated interest" under HRS § 269-19.5. HRS § 269-19.5(c) provides that contracts between a utility and an affiliated interest, including the transfer of interests in real property, must receive prior Commission approval. Under HRS § 269-19.5(d), the Commission may "exclude from the accounts of the public utility any payment or compensation to an affiliated interest for any services rendered or property


or service furnished . . . under existing contracts or agreements with the affiliated interest unless the public utility shall establish by clear and convincing evidence the reasonableness of the payment or compensation.”

HRS § 269-19.5(e) provides that the Commission shall have “continuing supervisory control over the terms and conditions of [all such] contracts and agreements” in order to protect the public interest. The financial statements provided in Docket No. 2008-0115 reveal any number of transfers of money and assets between the utility and its parent. The information submitted to the Commission by Wai’ola O Moloka’i on October 31, 2009, for example, lists as a recurring expense under code 2697 a journal entry dated 9/23/09 for \$33,916.00 identified as “charge water companies nominal rent for use of MPL water assets.” As the utility’s dealings with affiliated interests directly affect the proposed rates, MPL is of necessity “involved” in the ratemaking proceeding, whether as a willing or unwilling participant.

Finally, HRS § 269-17.5 places restrictions on ownership and control of a public utility by a foreign corporation or a nonresident alien. The extent to which Officer and Director Peter Nicholas (a New Zealand national) holds voting stock in the utility is (or should be) of concern to the Commission, as well as the extent of ultimate control over the utility exerted by MPL’s parent company (a foreign corporation).

For all of these reasons, Intervenor County of Maui respectfully requests that MPL's motion be denied.

DATED: Honolulu, Hawaii, November 4, 2009.



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CERTIFICATE OF SERVICE

Pursuant to Hawaii Administrative Rules § 6-61-21(d), the undersigned certifies that a true and correct copy of the foregoing document was duly served on the following parties on November 4, 2009, at their last known addresses in the manner specified below:

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**HAND DELIVERY**

DATED: Honolulu, Hawaii, November 4, 2009.

  
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